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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA  
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10 Christine M. Walsh )

11 Plaintiff, )

12 vs. )

13 Michael J. Astrue, Commissioner of )  
14 Social Security, )

15 Defendant. )  
16

No. CIV 03-440-TUC-JMR (GEE)

**REPORT AND RECOMMENDATION**

17 The plaintiff filed this action for review of the final decision of the Commissioner for  
18 Social Security pursuant to 42 U.S.C. §1383(c)(3). The case has been referred to the United  
19 States Magistrate Judge pursuant to the Rules of Practice of this court.

20 Pending before the court is a motion for summary judgment filed by the plaintiff on  
21 October 15, 2007, and a cross-motion for summary judgment filed by the defendant on February  
22 25, 2008. [docs. #29, 32, 37]

23 The Magistrate Judge recommends that the District Court, after its independent review,  
24 deny the plaintiff's motion for summary judgment and grant the defendant's cross-motion.  
25 Substantial evidence supports the ALJ's conclusion that Walsh is not disabled.  
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1           PROCEDURAL HISTORY

2           In April of 2002, Walsh filed an application for supplemental security income benefits  
3 alleging disability due to “nerve damage, fractures on back, legs, and right arm.” (Tr. 69, 115).  
4 The Social Security Administration (SSA) denied her application initially and again upon  
5 reconsideration. (Tr. 51-54, 58-61). Walsh requested review and on February 5, 2003,  
6 appeared without counsel at a hearing before Administrative Law Judge (ALJ) Frederick J.  
7 Graf. (Tr. 11-17). In his decision, dated May 27, 2003, the ALJ found Walsh was not disabled.  
8 (Tr. 11-17). Walsh appealed, but the Appeals Council denied review making the decision of the  
9 ALJ the final decision of the Commissioner. (Tr. 2-4); 20 C.F.R. § 416.1481.

10          Morgan then filed the instant complaint in U.S. District Court appealing the  
11 Commissioner’s final decision. *See* 20 C.F.R. § 422.210(a). She filed the instant motion for  
12 summary judgment on October 15, 2007. The Commissioner filed the instant cross-motion for  
13 summary judgment on February 25, 2008.

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15           Claimant’s Work History and Medical History

16          Walsh was 39 years old on the date of the ALJ’s decision. (Tr. 17, 283). From 1988 to  
17 1999, she worked as a sales person, cosmetologist, office manager, and sterilization tech. (Tr.  
18 116).

19          On December 2, 1999, Walsh sustained severe injuries as a result of falling from a  
20 freeway overpass in an apparent suicide attempt. (Tr. 157). She had several surgeries to repair  
21 fractures in her legs, pelvis and lower spine. *Id.* She was placed on Remeron and Zyprexa for  
22 “suicidal ideation.” *Id.*

23          Walsh was given a psychiatric evaluation on December 3, 1999. (Tr. 176). She was  
24 diagnosed with “Axis I: suicide attempt - actively suicidal; chronic depression relative to  
25 marital/custody problems, R/O schizo-affective illness; Axis II: deferred; very poor  
26 relationships and probably borderline personality disorder; Axis III: multiple trauma; Axis IV:  
27 separation from children, just quit job.” (Tr. 176).

1 Walsh was admitted on February 17, 2000 at the Marianjoy rehabilitation clinic. (Tr.  
2 274). Norman Aliga, M.D., noted past medical history for chronic constipation and depression.  
3 *Id.* He diagnosed “gait and self-care impairment . . . secondary to sacral and thoracolumbar  
4 fractures . . . , post sacral laminectomy for nerve root decompression, left tibial fibular fracture  
5 and left talar fracture, unsuccessful suicide attempt, neurogenic bladder and bowel and right  
6 tibia fracture.” (Tr. 276).

7 She was discharged from the Marianjoy rehabilitation clinic in March of 2000. (Tr.  
8 263). Norman Aliga, M.D., diagnosed Walsh as “Primary: status post suicide attempt with  
9 multiple fractures. Secondary: 1. Depression; 2. Suicide attempt history.” (Tr. 265).

10 In May of 2002, Walsh completed an Activities of Daily Living Questionnaire for  
11 Physical Impairments. (Tr. 86-88). She reported being able to use her hands and arms with  
12 only slight difficulty. *Id.* She has trouble carrying heavy items due to pain and balance  
13 problems. *Id.* She reports she can “sometimes” sit for two hours at a stretch. *Id.* She performs  
14 household chores such as “cleaning, making beds, [and] doing laundry” for a half-hour each  
15 day. *Id.*

16 In July of 2002, Walsh was examined by disability determination physician, Roopa K.  
17 Karri, M.D. (Tr. 138-41). Karri noted “[h]istory of back injury and pelvic injury in an accident,  
18 status post surgery to fix the pelvis with S1 nerve damage.” *Id.* “Right leg pain secondary to  
19 the accident.” *Id.* “She needs a cane to walk.” *Id.* “Pelvic pain and lower back pain secondary  
20 to the previous injuries as described above with a positive straight leg raising test and decreased  
21 range of motion.” *Id.* Karri noted “no signs of depression, agitation, irritability or anxiety.”  
22 *Id.*

23 In August of 2002, non-examining state agency physician, Paul LaFave, M.D., completed  
24 a Residual Functional Capacity Assessment. (Tr. 130-37). LaFave concluded Walsh could lift  
25 and/or carry 20 pounds occasionally and 10 pounds frequently. *Id.* She could stand and/or walk  
26 at least 2 hours in an 8-hour workday. *Id.* She could sit for about 6 hours in an 8-hour workday.  
27 *Id.* She should never climb ladders, ropes, or scaffolds. *Id.*

1 In September of 2002, non-examining state agency physician, Nick Mansour, M.D.,  
2 reviewed LaFave's report and affirmed it as written. (Tr. 26, 137).

3 On February 5, 2003, Walsh appeared without counsel at a hearing before Administrative  
4 Law Judge (ALJ) Frederick J. Graf. (Tr. 280). She was 38 years old on the date of the hearing.  
5 (Tr. 283). She finished 12<sup>th</sup> grade and had a GED. (Tr. 121, 283). She testified she had a foot  
6 ulcer that was not healing well. (Tr. 285). She stated "with my pelvic fractures and my S-1  
7 nerve damage, it's difficult to try to maintain a job for any amount of time, just because of  
8 neuropathy in my feet and pain in my spine, and my foot wound." (Tr. 285).

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10 CLAIM EVALUATION

11 Social Security Administration (SSA) regulations require that disability claims be  
12 evaluated pursuant to a five-step sequential process. 20 C.F.R. §§ 404.1520, 416.920; *Baxter*  
13 *v. Sullivan*, 923 F.2d 1391, 1395 (9<sup>th</sup> Cir. 1991). The first step requires a determination of  
14 whether the claimant is engaged in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4),  
15 416.920(a)(4). If so, then the claimant is not disabled, and benefits are denied. *Id.* If the  
16 claimant is not engaged in substantial gainful activity, the ALJ proceeds to step two which  
17 requires a determination of whether the claimant has a "medically severe impairment or  
18 combination of impairments." 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).

19 In making a determination at step two, the ALJ uses medical evidence to consider  
20 whether the claimant's impairment more than minimally limits or restricts his or her "physical  
21 or mental ability to do basic work activities." *Id.* If the ALJ concludes the impairment is not  
22 severe, the claim is denied. *Id.* Upon a finding of severity, the ALJ proceeds to step three  
23 which requires a determination of whether the impairment meets or equals one of several listed  
24 impairments that the Commissioner acknowledges are so severe as to preclude substantial  
25 gainful activity. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); 20 C.F.R. Pt. 404, Subpt. P,  
26 App.1. If the claimant's impairment meets or equals one of the listed impairments, then the  
27 claimant is presumed to be disabled, and no further inquiry is necessary. *Ramirez v Shalala*,  
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1 8 F.3d 1449, 1452 (9<sup>th</sup> Cir. 1993). If the claimant's impairment does not meet or equal a listed  
2 impairment, evaluation proceeds to the next step.

3 The fourth step requires the ALJ to consider whether the claimant has sufficient residual  
4 functional capacity<sup>1</sup> (RFC) to perform past work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).  
5 If the ALJ concludes the claimant has sufficient RFC, then the claim is denied. *Id.* If the  
6 claimant cannot perform any past work, then the ALJ must move to the fifth step which requires  
7 consideration of the claimant's RFC to perform other substantial gainful work in the national  
8 economy in view of claimant's age, education and work experience. 20 C.F.R. §§  
9 404.1520(a)(4); 416.920(a)(4).

10 In determining whether the claimant retains the ability to perform other work, the ALJ  
11 may refer to the Medical Vocational Guidelines ("the grids") promulgated by the SSA. *See* 20  
12 C.F.R. Pt. 404, Subpt. P, App.2; *Desrosiers v. Secretary of Health and Human Services*, 846  
13 F.2d 573, 576-577 (9<sup>th</sup> Cir. 1988). The grids categorize jobs according to their exertional  
14 requirements such as sedentary work, light work, or medium work. *Tackett v. Apfel*, 180 F.3d  
15 1094, 1101 (9<sup>th</sup> Cir. 1999). The grids calculate whether or not the claimant is disabled based  
16 on the claimant's exertional ability, age, education, and work experience. *Id.* The grids are a  
17 valid basis for denying claims where they completely and accurately describe the claimant's  
18 abilities and limitations. *Id.* at 1101-02. If the claimant has only exertional limitations, the  
19 claim may be resolved based only on the grids. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1115  
20 (9<sup>th</sup> Cir. 2006).

21 If the claimant has significant non-exertional limitations, the grids do not apply. *Penny*  
22 *v. Sullivan*, 2 F.3d 953, 958-959 (9<sup>th</sup> Cir.1993). "Non-exertional limitations are limitations that  
23 do not directly affect a claimant's strength." *Burkhart v. Bowen*, 856 F.2d 1335, 1340 (9<sup>th</sup> Cir.  
24 1988). Mental limitations, for example, are non-exertional. *Id.* at 1340-41. If significant non-  
25 exertional limitations prevent the claimant from performing the full range of work in any  
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28 <sup>1</sup> Residual functional capacity is defined as that which an individual can still do despite his or  
her limitations. 20 C.F.R. §§ 404.1545, 416.945.

1 exertional category, the ALJ must take the testimony of a vocational expert to deny the claim.  
2 *Id.* at 1341.

3 If the claimant has both exertional and non-exertional limitations, the ALJ must consult  
4 the grids first before considering the testimony of a vocational expert. *Id.* If the grids direct a  
5 finding of disability, that finding must be adopted by the Commissioner. *Lounsbury*, 468 F.3d  
6 at 1116.

### 7 8 The ALJ's Findings

9 At step one of the disability analysis, the ALJ found Walsh “has not engaged in  
10 substantial gainful activity since the alleged onset of disability.” (Tr. 16). At step two, he found  
11 Walsh has severe impairments, “nerve damage, fractures to back, legs and right arm.” (Tr. 13).  
12 At step three, the ALJ found Walsh’s impairments did not meet or equal the criteria for any  
13 impairment found in the Listing of Impairments, Appendix 1, Subpart P, of 20 C.F.R., Part 404.  
14 (Tr. 16). The ALJ then analyzed Walsh’s residual functional capacity (RFC). (Tr. 16). He  
15 found she has “residual functional capacity for sedentary work.” *Id.* At step four, the ALJ  
16 found Walsh could not perform her past relevant work. (Tr. 16). At step five, the ALJ  
17 employed the grids to conclude Walsh was not disabled. (Tr. 17).

### 18 19 STANDARD OF REVIEW

20 An individual is entitled to disability benefits if he or she demonstrates, through  
21 medically acceptable clinical or laboratory standards, an inability to engage in substantial  
22 gainful activity due to a physical or mental impairment that can be expected to last for a  
23 continuous period of at least twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). “[A]  
24 claimant will be found disabled only if the impairment is so severe that, considering age,  
25 education, and work experience, that person cannot engage in any other kind of substantial  
26 gainful work which exists in the national economy.” *Penny v. Sullivan*, 2 F.3d 953, 956 (9<sup>th</sup> Cir.  
27 1993) (quoting *Marcia v. Sullivan*, 900 F.2d 172, 174 (9<sup>th</sup> Cir. 1990)).  
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1 The findings of the Commissioner are meant to be conclusive. 42 U.S.C. §§ 405(g),  
2 1383(c)(3). The decision to deny benefits “should be upheld unless it contains legal error or is  
3 not supported by substantial evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9<sup>th</sup> Cir. 2007).  
4 Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept  
5 as adequate to support a conclusion.” *Id.* It is “more than a mere scintilla but less than a  
6 preponderance.” *Id.*

7 “Where evidence is susceptible to more than one rational interpretation, the ALJ’s  
8 decision should be upheld.” *Orn*, 495 F.3d at 630. “However, a reviewing court must consider  
9 the entire record as a whole and may not affirm simply by isolating a specific quantum of  
10 supporting evidence.” *Id.*

11 In evaluating evidence to determine whether a claimant is disabled, the opinion of a  
12 treating physician is entitled to great weight. *Ramirez v. Shalala*, 8 F.3d 1449, 1453-54 (9<sup>th</sup> Cir.  
13 1993). The Commissioner may reject a treating physician’s uncontradicted opinion only if he  
14 sets forth clear and convincing reasons for doing so. *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir.  
15 1995). If the treating physician’s opinion is contradicted by another doctor, the Commissioner  
16 may reject that opinion only if he provides specific and legitimate reasons supported by  
17 substantial evidence in the record. *Lester*, 81 F.3d at 830. No distinction is drawn “between  
18 a medical opinion as to a physical condition and a medical opinion on the ultimate issue of  
19 disability.” *Rodriguez v. Bowen*, 876 F.2d 759, 761 n.7 (9<sup>th</sup> Cir. 1989).

20 “The opinion of an examining physician is, in turn, entitled to greater weight than the  
21 opinion of a non[-]examining physician.” *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996).  
22 “[T]he Commissioner must provide ‘clear and convincing’ reasons for rejecting the  
23 uncontradicted opinion of an examining physician.” *Id.* “[T]he opinion of an examining doctor,  
24 even if contradicted by another doctor, can only be rejected for specific and legitimate reasons  
25 that are supported by substantial evidence in the record.” *Id.* at 830-31.

26 “Where medical reports are inconclusive, questions of credibility and resolution of  
27 conflicts in the testimony are functions solely of the [Commissioner].” *Magallanes*, 881 F.2d  
28 747, 751 (9<sup>th</sup> Cir. 1989) (punctuation omitted). The Commissioner’s finding that a claimant is



1 less than credible, however, must have some support in the record. *See Light v. Social Security*  
2 *Administration*, 119 F.3d 789 (9<sup>th</sup> Cir. 1997).

3 The ALJ need not accept the claimant's subjective testimony of disability, but if he  
4 decides to reject it, "[he] must provide specific, cogent reasons for the disbelief." *Lester*, 81  
5 F.3d at 834. "Unless there is affirmative evidence showing that the claimant is malingering, the  
6 Commissioner's reasons for rejecting the claimant's testimony must be clear and convincing."  
7 *Id.* "General findings are insufficient; rather, the ALJ must identify what testimony is not  
8 credible and what evidence undermines the claimant's complaints." *Id.*

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10 DISCUSSION

11 The decision of the ALJ is supported by substantial evidence. He permissibly relied on  
12 the report of the examining physician in evaluating Walsh's residual functional capacity. *See*  
13 20 C.F.R. § 416.920 (e). His conclusion that Walsh can perform the full range of sedentary  
14 work is supported by the assessment of the non-examining state agency physicians. Applying  
15 the grids, the ALJ properly concluded Walsh is not disabled. *See Tackett v. Apfel*, 180 F.3d  
16 1094, 1101-02 (9<sup>th</sup> Cir. 1999).

17 The ALJ discounted Walsh's subjective complaints of disability as inconsistent with the  
18 medical record. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9<sup>th</sup> Cir. 2005) ("Although lack of  
19 medical evidence cannot form the sole basis for discounting pain testimony, it is a factor that  
20 the ALJ can consider in his credibility analysis."). The ALJ noted that when Walsh was  
21 discharged from rehabilitation in February of 2000 "she was able to perform weight bearing  
22 [tasks], eating independently, and had an independent to modified independent function with  
23 some supervision." (Tr. 13). Walsh was examined by the disability determination physician,  
24 Roopa K. Karri, M.D., approximately 2 and one-half years after her surgeries, and while Karri  
25 observed some lingering effects such as "decreased sensation in the left foot and an absent ankle  
26 jerk" he found her "strength and range of motion are normal in the upper and lower  
27 extremities." *Id.*, (Tr. 138-41).



1 The ALJ further noted that since her discharge, Walsh has not sought any further  
2 treatment for her injuries or for her pain. (Tr. 14-15). There is no evidence in the record of any  
3 further mental treatment or any allegation of continuing mental impairments. *Id.*; *Burch*, 400  
4 F.3d at 681 (“The ALJ is permitted to consider lack of treatment in his credibility  
5 determination.”). In her Activities of Daily Living questionnaire, Walsh reported being able to  
6 care for her daily needs and perform light house work. (Tr. 14, 86-88). Household activities  
7 are generally not performed with the same persistence and pace required in the workplace, but  
8 they may be considered by the ALJ in evaluating a claimant’s subjective testimony of disability.  
9 *Morgan v. Apfel*, 169 F.3d, 595, 600 (9<sup>th</sup> Cir. 1999). The ALJ provided clear and convincing  
10 reasons for discounting Walsh’s subjective testimony of disability.

11 Walsh maintains she has “state physicals each year with physicians signing proper paper  
12 work [i]ndicating a physical condition that will never change that impedes earning a living filed  
13 each year.” [doc. # 29] The record lends some support to her allegations. The examining  
14 physician, Roopa K. Karri, found Walsh has physical impairments that affect her ability to walk  
15 and raise her leg. (Tr. 138-41). These impairments certainly limit the type of jobs Walsh can  
16 perform and therefore “impede[]” her ability to “earn[] a living.” The ALJ acknowledged she  
17 cannot return to her past relevant work as a cosmetologist because she is limited in her ability  
18 to stand and walk. (Tr. 15). There is, however, no indication in the medical record that her  
19 impairments are so severe that they render her completely disabled.

#### 20 21 RECOMMENDATION

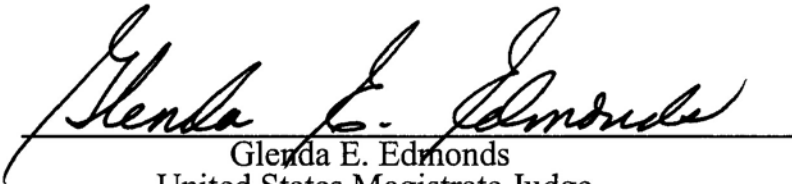
22 For the foregoing reasons, the Magistrate Judge recommends that the District Court, after  
23 its independent review, deny the plaintiff’s Motion for Summary Judgment [doc. #29] and grant  
24 the defendant’s Motion for Summary Judgment. [docs. # 32, 37] The defendant’s motions for  
25 entry of judgment should be granted. [docs. # 20, 22, 24]

26 Pursuant to 28 U.S.C. § 636(b), any party may file and serve written objections within  
27 10 days after being served with a copy of this Report and Recommendation. If objections are  
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1 not timely filed, the party's right to de novo review may be waived. *See United States v. Reyna-*  
2 *Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (en banc), *cert. denied*, 540 U.S. 900 (2003).

3 The Clerk of the Court is directed to send a copy of this Report and Recommendation  
4 to all parties.

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6 DATED this 13<sup>th</sup> day of May, 2008.

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11 Glenda E. Edmonds  
United States Magistrate Judge  
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